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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jens Foegler

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PROPAT, L.L.C.

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CHARLOTTE, NC 28211-2841

EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,976	Applicant(s) FOEGLER ET AL.	
	Examiner MICHELE JACOBSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/31/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 10 recites the limitation "wherein the further natural or synthetic polymer". There is insufficient antecedent basis for this limitation in the claim. Claim 1 from which claim 10 depends does not recite a "further natural or synthetic polymer". The examiner believes applicant may have intended for claim 10 to depend from claim 8. Claim 11 is rejected for being dependent from indefinite claim 10. For the purpose of expedited examination the examiner will interpret claim 10 to encompass the limitation of wherein the coating of claim 1 further comprises a primary plasticizer. Appropriate correction is required.

4. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 is recited to depend from claim 24. It is unclear from which claim claim 24 is intended to depend. The examiner believes applicant may have intended claim 24 to depend from claim 23 and for the purpose of expedited examination will interpret the claim as such. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-14, 17, 19, 20, 23 and 25 rejected under 35 U.S.C. 102(b) as being anticipated by Gord et al. U.S. Patent Application Publication No. 2002/0064580 (hereafter referred to as Gord).

7. Gord teaches a cellulose based food casing, particularly for sausage, manufactured from a solution comprising cellulose and a first and second additive. (Para. 13) The casing is preferably tubular, but can also be sheet-shaped. It can additionally contain fiber reinforcement, such as hemp fiber paper, which typically involves the insertion of a sheet-shaped fiber-like material with a weight generally of 15 to 28 g/m². The fiber-like sheet material is generally formed into a tube, which is then coated on the inside and/or outside with the cellulose based casing solution which comprises additives. (Para. 18)

8. The first additive is a surface-modifying additive which may comprise proteins such as gelatin and diketenes with generally straight-chained, saturated (C₁₄-C₂₀) alkyl radicals. It is also possible to use these additives simultaneously. Proteins in particular improve the adhesion of the sausage filling and additives with fat-like properties facilitate the peeling-off of the casing. (Para. 19) The percentage of surface-modifying

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additives is preferably 0.2-50.0 weight % based on the weight of the cellulose in the solution or on the cellulose in the final casing. (Para. 20)

9. The second additive is preferably capable of changing the internal structure of the cellulose casing. Alginates, polyvinyl alcohol, polyvinyl acetate, polyacrylates, polyvinyl pyrrolidone, copolymers with units of vinyl pyrrolidone, methylvinylether/maleic acid anhydride copolymers are all recited as additives that may partially affect the pliability and permeation of the casings. (Para. 21) These types of additives may be added in a weight % of 0.1 to 50 in relation to the weight of the cellulose in solution or on the weight of the cellulose in the final casing. (Para. 22)

10. The inventive tubular casing can be equipped with an impregnation or coating on the interior and/or exterior side, depending on the usage of the casing, e.g. a liquid smoke impregnation, an easy-peel interior treatment, an adhesion or separation treatment. The same also applies to the tubular films with fiber reinforcement and for flat films. (Para. 40) In the exemplary embodiments the inventive casings are recited to be coated with an easy-peel material on the interior surface during the shirring process. (Para. 47)

11. Examples 3 and 6 both disclose casing solutions comprising gelatin and example 13 discloses coating a solution comprising gelatin on a tube made of a fiber fleece with a weight of 17 g/m². (Para. 50, 53 and 63) The gelatin containing coatings are all recited to have good adhesion properties.

12. The examiner interprets the cellulose/additive containing solution recited by Gord to read on the protein containing coating solution recited in claim 1 since the solution

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recited by Gord is disclosed to be useful for coating fiber based inserts and is disclosed to comprise a protein such as gelatin. Therefore the shirred fiber fleece with a weight of 17 g/m^2 casing with one longitudinal seam coated on the inside or outside with a solution comprising the protein gelatin in a weight percent of between 0.2-50 anticipates the limitations set forth in claims 1-7, 19, 20, 23 and 25.

13. Since Gord further discloses that the casing solution can comprise several of the surface-modifying additives recited (such as diketenes with generally straight-chained, saturated ($\text{C}_{14}\text{-C}_{20}$) alkyl radicals) simultaneously Gord anticipates a casing comprising a protein coating and diketenes with generally straight-chained, saturated ($\text{C}_{14}\text{-C}_{20}$) alkyl radicals as recited in claims 13 and 14.

14. Gord also anticipates a protein containing coating with up to 50% natural or synthetic polymer including alginates, polyvinyl alcohol, polyvinyl acetate, polyacrylates, polyvinyl pyrrolidone, copolymers with units of vinyl pyrrolidone, methylvinylether/maleic acid anhydride copolymers as recited in claims 8-12.

15. Gord specifically recites that the inventive casing can be coated with an additional layer of a liquid smoke impregnation, an easy-peel interior treatment, an adhesion or separation treatment. The examiner interprets these layers to read on the additional non-protein layer recited in claim 17.

16. Claims 1, 17 and 18 rejected under 35 U.S.C. 102(b) as being anticipated by Jon et al. U.S. Patent No. 5,955,126 (hereafter referred to as Jon).

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17. Jon teaches a polyvinylidene chloride copolymer coated fiber reinforced cellulose casing coated with a solution comprising a protein. (Claims 1 and 6)

18. Jon clearly anticipates the reinforced food casing coated with a solution comprising protein further comprising a polyvinylidene chloride layer as recited in claims 1, 17 and 18.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 15, 16, 21, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gord et al. U.S. Patent Application Publication No. 2002/0064580 (hereafter referred to as Gord).

21. Gord teaches what has been recited above but is silent regarding the disposition of 0.5-12 % by weight of pigment or dye in the inventive casing, a method of coating a tubular support film comprising charging the tube with supporting air, a method of forming the casing recited with a fiber support comprising coating a flat shaped fiber support followed by forming the sheet into a tube, and closing the sausage produced from the shirred casing recited on one end with a metal or plastic clip, tying with yarn or by sewing.

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22. The examiner takes official notice that it is well known in the sausage casing art to add pigments or dyes to the materials the casings are made from in order to impart a more pleasing appearance to the casing produced. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added pigments or dyes to the coating solution recited by Gord. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the amount of pigment or dye used depending on the intensity of the resulting color desired. Such an optimization of the obvious addition of pigments or dyes would have produced the invention as claimed in claims 15 and 16.

23. Gord recites coating the fiber based support material after it has been formed into a tube. The examiner takes official notice that it is well known in the sausage casing art to support casings that are in tubular form with air so that they may be coated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have supported the casing recited by Gord with air while coating it with the solution recited. The obvious utilization of this method step would have produced a method the same as that claimed claim 21.

24. The examiner takes official notice that it is well known in the sausage casing art to coat a flat substrate prior to forming it into a longitudinal tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have coated a flat fiber substrate with the coating solution recited by Gord prior to lap sealing it into a tube in order to obviate the necessity for supporting means of the tube

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during the coating step. The obvious utilization of this method step would have produced a method the same as that claimed claim 22.

25. Gord specifically recites shirring the inventive casing. The examiner takes official notice that it is well known in the sausage art to provide means for separating the individual sausage links that include metal or plastic clips, tying and sewing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized any one of these techniques to separate the sausage links produced using the sausage casing recited by Gord. The obvious utilization of these separation techniques would have produced a method the same as that claimed claim 24.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson
Examiner /M. J./
Art Unit 1794

/Carol Chaney/

Supervisory Patent Examiner, Art Unit 1794